

Court No. - 75

Case :- APPLICATION U/S 482 No. - 12417 of 2005

Applicant :- Ram Komal and two others

Opposite Party :- State of U.P. and another

Counsel for Applicant :- Neeraj Singh

Counsel for Opposite Party :- Government Advocate, K.N. Mishra, R.K. Shahi

Hon'ble Umesh Chandra Sharma, J.

1. Heard Sri Neeraj Singh, learned counsel for the applicants, learned A.G.A for the State and perused the record.

2. This application under Section 482 Cr.P.C. has been filed to quash the proceeding of Criminal Case No. 1278 of 2005, under Sections 147, 149, 323, 452, 435, 504, and 506 I.P.C., registered at Police Station Bankata, District Deoria, pending in the Court of Judicial Magistrate, Court No. 11, Deoria.

3. The brief facts of the case are that on 08.01.2005 at about 3:00 p.m., eight persons including the applicants came to the house of informant-opposite party no. 2 - Uma Shankar Kushwaha with an intention of taking possession of Sahen land, which was situated at the door of the informant. During the said action, all the accused abused the family members of the informant, entered into the house and beaten them. In this connection an F.I.R was lodged by opposite party no 2 on the same day at 03:00 p.m, which was registered as Case Crime No. 03/2005 under Sections 147, 148, 323, 504, 506, 452, 435 I.P.C at P.S. Bankata, District Deoria. A copy of the same is annexed as Annexure No. 1 to the affidavit. The Station Officer of P.S. Bankata investigated the matter and after completing the investigation, a charge-sheet was submitted by him on 13th January, 2005 against five persons namely Daroga, Rakesh @ Lal Babu, Chandrika, Manoj and Pramod, under Sections 147, 323, 504, 506 I.P.C and found that the applicants namely Ram Komal, Rajesh and Bhuwar were falsely implicated and as such final report has been

submitted in respect of the applicants. A copy of the charge-sheet/final report has been annexed as annexure no. 2 to the application.

4. On the said charge-sheet, the learned Magistrate took cognizance and issued process on 29.03.2005 against the aforesaid five accused persons in Case Crime No. 846 of 2005. The aforesaid order has been annexed as Annexure 03 to the application. In pursuance of the aforesaid order dated 29.03.2005, all the aforesaid five accused persons appeared before the concerned Magistrate and they were released on bail .

5. On 22.01.2005, the informant filed an application before S.P. Deoria for the transfer of the aforesaid case from Police Station Bankata to Police Station Kotwali, Salempur, District Deoria, to reinvestigate the matter. A copy of the same is annexed as Annexure no. 4 to the application. Thereafter, S.P. Deoria transferred the aforesaid case from Police Station Bankata to Police Station Kotwali, Salempur, *vide* its order dated 10.02.2005 to reinvestigate the matter without seeking formal permission from the concerned court. The aforesaid order is annexed as annexure no. 5 to the application. The S.P. transferred the case without assigning any reason for investigation after the submission of the charge-sheet. Thereafter, S.I. Ram Ashray Yadav of P.S Kotwali Salempur, Deoria reinvestigated the matter and submitted a charge-sheet against all eight persons, including the applicants under Sections 147, 149, 452, 435, 323, 504 and 506, I.P.C on 14.4.2005, who were already exonerated by the first I.O. of P.S. Bankata. A copy of the charge-sheet has been annexed as Annexure No. 6 to the affidavit.

6. On the aforesaid second charge-sheet applicants have been summoned by Judicial Magistrate Court No. 11, Deoria in Criminal Case No. 1278 of 2005 - (*State Vs. Ram Komal &*

Ors.), under the aforesaid Sections. A copy of the order dated 15.06.2005 has has been annexed as Annexure No. 7, to the affidavit.

7. It is relevant to mention here that no permission was sought by S.P. Deoria from the concerned court before transferring the aforesaid investigation. The applicants have falsely been implicated in the said case, which was also found by the Ist I.O of the case and relying on the first charge-sheet, the Judicial Magistrate had summoned only five persons as accused. It is relevant to mention that no new fact came in light as a ground, even though a second charge-sheet has been submitted against the applicants.

8. In ***Hasanbhai Valibhai Qureshi Vs. State of Gujarat, (2004) 5 SCC 347***, the Apex Court has held that the Police has to inform the Court and shall seek formal permission to make further investigation when fresh facts come to the light.

9. In view of the above, the proceedings of Criminal Case No. 1278 of 2005-*(State Vs. Ram Komal and others)*, pending in the Court of Judicial Magistrate-II, Deoria, be quashed.

Copies of the referred papers have been annexed to the affidavit.

10. The informant opposite party no. 2, filed a counter affidavit and denied the allegations of the applicants. He further contended that the First I.O. of the case had not investigated the case properly, he was under the influence of the accused persons, he recorded the statements of the persons, who were enimical to complainant/opposite party no. 2 to save the real culprits. The complainant and the injured persons had clearly stated in their statement before the First I.O that all the accused persons had caused injury to them and put their hut on fire. The statements of the witnesses have been appended to the counter affidavit in Criminal Misc.

Application No. 13695 of 2005. The I.O. of P.S. Bankata did not investigate the matter properly. A complaint was moved before S.P. Deoria for transferring the investigation to another Police Station. The said request was considered and S.P. Deoria, *vide* an order dated 10th Feb. 2005 and in the interest of justice transferred the investigation from P.S. Bankata to P.S. Kotwali, Salempur, Deoria. There is no need of formal permission of the concerned Court and the order dated 10th February, 2005 passed by S.P. Deoria is just and legal. The investigation had been transferred by S.P. Deoria when he found that P.S. Bankata was not investigating the case properly, hence for the proper investigation he had transferred the investigation. After proper investigation, the I.O. S.I. Ram Ashray Yadav submitted the charge-sheet against the applicants under the aforesaid Sections, which is legal, just and proper and in accordance with law and does not require any interference by this Court at this stage.

11. The Court below has legally summoned the accused persons in accordance with the law. The Second I.O. has submitted the subsequent charge-sheet on the basis of new material facts. The Apex Court has clearly held that further investigation is no bar under Section 173 (8) of the Cr.P.C while the Police Report has been submitted earlier. From the bare perusal of the judgment of the Apex Court as stated by the applicant, it is borne out that further investigation can be conducted, without the direction of the concerned court and the formal permission is not necessary if the head of police thinks it is proper. He has the right to direct the police for reinvestigation or transfer of investigation to some other Police Station. Hence, the judgment cited by the applicants is not applicable in the present case.

12. During the pendency of the present application, the applicants further attacked upon the complainant and his

family members on 14.12.2005. In this regard, another F.I.R has also been lodged as Case Crime No. 556 of 2005, under Sections 147, 148, 149, 323, 324, 504 and 506 I.P.C at P.S. Bankata, district Deoria and the complainant and the injured family members were medically examined same day.

13. Therefore, the application under Section 482 Cr.P.C be dismissed.

14. No rejoinder has been filed by the applicants against the counter affidavit of O.P. No.2.

15. Heard and perused the record.

16. The applicants have taken only one ground that before passing an order to reinvestigate the case, the S.P. Deoria was duty-bound to take permission from the concerned Magistrate. In this regard, the applicants have relied on ***Hasanbhai Valibhai Qureshi Vs. State of Gujarat (supra)***, in which an application was moved to get the case investigated by an independent Agency other than the Police as the Local Police was under the pressure of the local M.L.A and the investigation was not carried out in a straight-forward manner. In the aforesaid case, initially an F.I.R had been lodged under Sections 395 and 120-B of the I.P.C and Section 135 of the Bombay Police Act, but after a few hours of registration of the F.I.R, Sections 395 and 120-B I.P.C were deleted by the prosecuting agency and as a result of such deletion the accused persons managed to get bail.

17. The facts of both the cases are quite different. In this case no prayer was made to S.P. Deoria to transfer the investigation to another agency, rather a request was made to transfer the investigation from one Police Station to another and after being satisfied, S.P. Deoria transferred the investigation to Police Station Kotwali, Salempur, Deoria. Thereafter, the case was investigated by another I.O, who

submitted a charge-sheet against all eight accused persons named in the F.I.R including the applicants.

18. In the cited case, an aspect of amendment of charge was also involved and Sections 228, 240 and 216 Cr.P.C. were also dealt with. The Apex Court had considered Section 173(8) of the Cr.P.C and has held that it is open to the Police to conduct a proper investigation, even after the court took cognizance of any offence on the strength of a police report earlier submitted.

19. In this case, the S.P. Deoria, was not satisfied with the investigation done by the I.O. of P.S Bankata. The Apex Court relying on ***Om Prakash Narang Vs. State (Delhi Administration) AIR 1979 SCC 1791***, held that, further investigation is not altogether ruled out. If cognizance has been taken by the Court when defective investigation comes to light during the course of trial, it may be cleared by further investigation, if circumstances so permitted. Though it has also been said that the Court should be informed and formal permission may be taken when fresh facts come to light. In this case, according to the F.I.R, the whole facts were before the I.O that all the accused persons had committed the offence and the first I.O. of P.S. Bankata, being influenced by the applicants exonerated him and submitted a charge-sheet only in respect of the rest of the five accused persons. In short, the Apex Court held that if there is a necessity for further investigation, the same can certainly be done as prescribed by Law. The Court further held that the mere fact that there may be further delay in concluding the trial, does not stand on the way of further investigation, if that would help the Court in arriving at truth and do real substantial as well as effective justice.

Section 173 (8) of the Code of Criminal Procedure is as under:-

“(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub- section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub- sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub- section (2).”

20. In ***Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwanandha Maharaj v. State of A.P., AIR 1999 SC 2332*** and in ***N.P. Jharia v. State of M.P., AIR 2007 SC 2677***, it has been held that even after the Court took cognizance of any offence, on strength of police report first submitted, it is open to Police to conduct further investigation. In such a situation power of Court to direct the Police to conduct further investigation can not have any inhibition. There is nothing in Section 173 (8) to suggest that the Court is obliged to hear the accused before any such direction is made. Casting of any such obligation on Court would only result in encumbering it with burden of searching for all potential accused to be afforded with opportunity of being heard.

21. On the basis of above discussion, this Court is of the considered view that in the facts and circumstances of this case no formal permission of the concerned court was necessary for S.P. Deoria before transferring the investigation to another I.O of another Police Station. Thus, the present application has no force and is liable to be dismissed.

ORDER

22. This application under Section 482 Cr.P.C is rejected accordingly and the stay order stands vacated.

23. Let a copy of this order be sent to the Judicial Magistrate II, Deoria, to proceed with the Criminal Case No. 1278 of

2005, under Sections 147, 149, 323, 452, 435, 504, 506 I.P.C, registered at Police Station Bankata, District Deoria, in accordance with the law and to conclude its trial as early as possible, as the matter has become very old.

Order Date :- 19.09.2023.

Vinod.